

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA CRIME VICTIMS REPARATIONS BOARD

In the Matter of Anthony E.
Boykin v. Minnesota Crime
Victims Reparations Board

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 10:30 a.m. on Wednesday, July 19, 1989 in the Fourth Floor Jury Room, St. Louis County Courthouse, Duluth, Minnesota.

Peggy L. Bunch, Special Assistant Attorney General, 200 Ford Building, 117 University Avenue, St. Paul, Minnesota 55155, appeared on behalf of the Minnesota Crime Victims Reparations Board. Anthony E. Boykin, 319 West Third Street, Apartment 8, Duluth, Minnesota 55812, appeared and testified on his own behalf. The record closed at the conclusion of the hearing on July 19, 1989.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Crime Victims Reparations Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Executive Director Fern Sepler, N465 Griggs Midway Building, 1821 University, St. Paul, Minnesota 55104.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the economic (wage) loss claimed by Mr. Boykin as a result of the injury he suffered is compensable pursuant to Minn. Stat. 61A.52, subd. 8(a)(3).

Based upon all the proceedings herein the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Anthony E. Boykin is a 27-year-old male who currently resides in Duluth, Minnesota. On May 15, 1988, Mr. Boykin was shot in the stomach by an assailant in Duluth. The bullet went through Boykin's abdomen but split into fragments, leaving several small pieces of lead near his spine. This assault was reported to the police on May 15, 1988 and a claim form was filed with the Crime Victims Reparations Board on June 10, 1988. Mr. Boykin was physically unable to work until the end of August, 1988.

2. Anthony Boykin had been unemployed for approximately two months

before he was shot. Two days before the shooting occurred, Boykin interviewed with Perkins and was told he would be hired. At that time, Mr. Boykin was about to become a father and needed a job as soon as possible.

3. Lance Driscoll is an assistant pastor of a church and the president of ITM Contracting Company. Mr Driscoll has known Anthony Boykin for approximately five years. Boykin was the best man at Driscoll's wedding. Approximately two years before the shooting occurred, Boykin had worked for Mr. Driscoll helping him repair his home and was paid for that work. In the fall of 1987 and winter of 1988, Mr. Driscoll talked to Mr. Boykin about working for him (Driscoll) as a painter in the summer of 1988. It was agreed between the two that Boykin would work for Mr. Driscoll during that summer.

4. Mr. Driscoll's first painting job began in late April of 1988. It was the first house of several that had to be painted that summer. Because Driscoll had not talked to Boykin recently, Driscoll hired a crew of painters to start work on the first house. Driscoll did speak with Boykin the first week in May and both agreed that Boykin would begin working when the second house was ready to be painted. However, Boykin interviewed for the job at Perkins because of the necessity to find work immediately. He had decided to work at Perkins, if he got the job, and also paint for Mr. Driscoll at the same time. Mr. Boykin was shot prior to beginning work for Mr. Driscoll.

5. In his claim filed with the Board on June 10, 1988, Mr. Boykin stated that he had lost wages at Perkins restaurant from May 21, 1988 to the present. When contacted by the Board, the manager at Perkins stated that he did not know how many hours Boykin would have worked and also that Boykin had not been promised a job there.

6. After Mr. Boykin was informed that no lost wages could be paid based on the Perkins job, he informed the Board that he would have worked for Mr. Driscoll (ITM Contracting) if no offer of employment had been made by Perkins. Lance Driscoll submitted a statement to the Board on September 26, 1988 indicating that Anthony Boykin would have had gross earnings in the amount of \$5,760 if he had been physically able to paint during the summer.

7. on November 28, 1988, the Board denied Mr. Boykin's claim for wage loss because of his inability to verify that he would have been employed if the shooting had not occurred. The Board did, however, pay Mr. Boykin's medical costs as a result of the injury.

8. Anthony Boykin filed a timely appeal of the Board's initial decision to deny his wage loss claim and the Board met on December 16, 1988 to reconsider his petition. At that time, the Board affirmed its previous decision to deny Boykin's claim for wage losses due to the lack of verification that a job was available if no injury had occurred. Anthony Boykin filed a timely appeal of the Board's decision to deny his wage loss claim.

9. Between late May and September 1, 1988, ITM Contracting (Lance Driscoll) painted 16 houses. Two houses were often being painted at the same time by two crews of painters employed by Mr. Driscoll. Each crew consisted of three painters.

10. Mr. Driscoll received \$15,085 for the houses he painted between late May of 1988 and September 1, 1988. Approximately 20 percent of the proceeds was used to pay for materials, resulting in a net of \$12,068. This amount was split between all of the painters; six painters on two crews. Each painter would have then been entitled to approximately \$2,011 in gross wages.

II. The Judge specifically finds that Anthony Boykin would have made gross wages in the amount of \$2,011 from employment with Mr. Driscoll if he had not been injured in the summer of 1988.

12. Mr. Boykin accepted a full-time job with the Radisson Hotel in Duluth on August 28, 1988. At that time, he was still experiencing pain in his back and had difficulty performing the job.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Crime Victims Reparations Board and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 14.50 and 611A.56, subd. 1(a). Proper notice of the hearing was given and all relevant substantive and procedural requirements of law or rule have been fulfilled by the Board.

2. Minn. Stat. 611A.52, subd. 8(a)(3) states that economic loss is the "actual economic detriment incurred as a direct result of injury or death . . . [which] is limited to . . . loss of income greater than \$50 that the victim would have earned had the victim not been injured." The Judge concludes that Anthony Boykin would have earned gross wages in the amount of \$2,011 from ITM Contracting if he had not been shot on May 15, 1988.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Crime Victims Reparations Board pay economic (wage) loss to Anthony E. Boykin based upon lost gross earnings of \$2,011.

Dated this 1st day of August, 1989.

PETER C ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded.

MEMORANDUM

The Board strenuously argues that because Anthony Boykin did not have an employment contract with Lance Driscoll and he had no documentation to support any previous earnings experience, he has not shown that he "would have earned" any money in the summer of 1988. The Judge has concluded that the Board's reading of the statute is much too narrow.

Lance Driscoll testified under oath that he was going to employ Anthony Boykin in late May of 1988 as soon as a second house was ready to be painted. He stated clearly that Boykin would have earned a proportionate share of the proceeds he received from the house painting contracts. Anthony Boykin testified that because he was about to become a father, it was necessary for him to find work immediately. He stated that he thought Perkins was going to hire him but he was planning to work for Mr. Driscoll even if he had been hired.

The Minnesota Crime Victims Reparations Act is remedial legislation and should be accorded a liberal construction. Petition of Oakgrove on Behalf of Oakgrove, 371 N.W.2d 69, 71 (Minn. App. 1985). Consequently, for the Board to assert that because Mr. Boykin could not establish with concrete specificity the hours he would have worked and the amount of money he would have made during the summer of 1988, his claim for wage loss must be denied totally, defeats the intended purpose of the Act. The Judge has made findings based on the evidence contained in the record herein and concluded that Anthony Boykin "would have earned" \$2,011 in gross wages had he not been shot in May of 1988. It is quite probable that Mr. Boykin would have earned significantly more than that if he had been physically able to work one or more jobs that summer.

P.C.E.